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FILED

FEB 14 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name AVALOS (Last) JOSE (First) M. (Initial)

Prisoner Number T-62425

Institutional Address P.O. BOX 705, SOLEDAD, CALIF. 93960-0705

WHA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSE MIGUEL AVALOS
(Enter the full name of plaintiff in this action.)

vs.

BEN CURRY, WARDEN

(Enter the full name of respondent(s) or jailor in this action)

CV 08 0949

Case No. _____
(To be provided by the clerk of court)

PETITION FOR A WRIT OF HABEAS CORPUS

WHA

E-filing

(PR)

Read Comments Carefully Before Filling In

When and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainers), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition? 19 YEAR PRISON SENTENCE

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

MONTEREY COUNTY SUPER. CT. MONTEREY, CALIF.

Court Location

(b) Case number, if known SS02937A

(c) Date and terms of sentence JUNE 27, 2002/19 YEARS

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes XX No ____

Where?

Name of Institution: CORRECTIONAL TRAINING FACILITY

Address: P.O. BOX 705, SOLEDAD, CA. 93960-0705

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

664/187; 12022.5; 186.22

3. Did you have any of the following?

Arraignment: Yes XX No ____

Preliminary Hearing: Yes ____ No XX

Motion to Suppress: Yes ____ No XX

4. How did you plead?

Guilty ____ Not Guilty ____ Nolo Contendere X

Any other plea (specify) N/A

5. If you went to trial, what kind of trial did you have? N/A

Jury ____ Judge alone ____ Judge alone on a transcript ____

6. Did you testify at your trial? N/A Yes ____ No ____

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes XX No ____

(b) Preliminary hearing N/A Yes ____ No XX

(c) Time of plea Yes XX No ____

(d) Trial N/A Yes ____ No ____

(e) Sentencing Yes XX No ____

(f) Appeal Yes XX No ____

(g) Other post-conviction proceeding Yes XX No ____

8. Did you appeal your conviction? Yes XX No ____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes XX No ____

Year: 2002/2003 Result: JUDGEMENT AFFIRMED

Supreme Court of California Yes ____ No XX

Year: ____ Result: ____

Any other court Yes ____ No XX

Year: ____ Result: ____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes ____ No XX

(c) Was there an opinion? Yes XX No ____

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes ____ No XX

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes XXX No ____

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: MONTEREY COUNTY SUPERIOR COURT

Type of Proceeding: HABEAS CORPUS

Grounds raised (Be brief but specific):

a. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

b. TRIAL COURT ABUSE OF DISCRETION

c.

d.

Result: DENIED Date of Result: 3/23/07

II. Name of Court: CALIF. CT. OF APP. SIXTH APP. DIST.

Type of Proceeding: HABEAS CORPUS

Grounds raised (Be brief but specific):

a. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

b. TRIAL COURT ABUSE OF DISCRETION

c.

d.

Result: DENIED Date of Result: 5/10/07

III. Name of Court: CALIFORNIA SUPREME COURT

Type of Proceeding: HABEAS CORPUS

Grounds raised (Be brief but specific):

a. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

b. TRIAL COURT ABUSE OF DISCRETION

c.

d.

Result: DENIED Date of Result: 10/10/07

IV. Name of Court: N/A

Type of Proceeding:

Grounds raised (Be brief but specific):

a.

b.

c.

d.

Result: Date of Result:

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes ____ No X

Name and location of court:

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

need more space. Answer the same questions for each claim.

[Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

Claim One: PLEASE SEE ATTACHED PETITION

Supporting Facts: PLEASE SEE ATTACHED PETITION

Claim Two: PLEASE SEE ATTACHED PETITION

Supporting Facts: PLEASE SEE ATTACHED PETITION

Claim Three: PLEASE SEE ATTACHED PETITION

Supporting Facts: PLEASE SEE ATTACHED PETITION

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

N/A

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

PLEASE SEE ATTACHED PETITION

Do you have an attorney for this petition? Yes____ No XX

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on 3-Jan-08
Date

Signature of Petitioner

(Rev. 6/02)

JOSE MIGUEL AVALOS
CDCR #T-62425 RA-321L
C.T.F. NORTH FACILITY
P.O. BOX 705
SOLEDAD, CALIF. 93960-0705

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE MIGUEL AVALOS, Petitioner, -vs- BEN CURRY, WARDEN, Respondent.	Case No. PETITION FOR WRIT OF HABEAS CORPUS 28 U.S.C. § 2254

COMES NOW, petitioner, **Jose Miguel Avalos**, pursuant to 28 U.S.C. § 2254 et seq., and all other relevant and applicable rules, and hereby respectfully prays for the above entitled court to issue forth immediately, a writ of habeas corpus, thereby ordering the immediate and unconditional release of petitioner therefrom further unconstitutional restraint of his liberty or, in the alternative, order petitioner's no contest plea of which was induced by the fraudulent misrepresentations of his trial counsel, to be immediately vacated to which petitioner further states as follows:

I. STANDARD OF REVIEW

Citing 28 U.S.C. § 2254 (a) and the relevant portion thereof: ["]The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State court only on the ground

that he is in custody in violation of the [U.S.] Constitution or laws or treaties of the United States.

Pursuant to § 2254 (b)(1), an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgement of a State Court shall not be granted unless it appears that: (A) the applicant has exhausted the remedies available in the courts of the State; or (B)(i) there is an absence of available state corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

Federal habeas corpus relief is also not available for any claim decided on the merits in state court proceedings unless the state court's adjudication of the claim: (1) resulted in a decision that was contrary to, or involved an unreasonable application of clearly established law as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. § 2254 (d)(1)(2); Ramirez v. Castro, 365 F.3d 755, 773-75 (9th Cir. 2004). The "contrary to" and "unreasonable application" clauses of § 2254 (d)(1) are different. As the U.S. Supreme Court explained:

> ["]A federal habeas court may issue the writ under the "contrary to" clause if the state court applies the rule different from the governing law set forth in our cases, or if it decides a case differently than we have done on a set of materially indistinguishable facts. The court may grant relief under the "unreasonable application clause" if the state court correctly identifies the governing

> legal principle from our decisions but unreasonably applies it to the facts of the particular case. The focus of the latter inquiry is on whether the state court's application of clearly established federal law is objectively unreasonable, and we stressed in Williams v. [Taylor, 529 U.S. 362 (2000)] that an unreasonable application is different from an incorrect one.

Bell v. Cone, 535 U.S. 685, 694 (2002).

The court will look to the last reasoned state court decision in determining whether the law applied to a particular claim by the state courts was contrary to the law set forth in the cases of the United States Supreme Court or whether an unreasonable application of such law has occurred. Avila v. Galaza, 297 F.3d 911, 918 (9th Cir. 2002) cert. dismissed, 538 U.S. 919 (2003). Where the state court fails to give any reasoning whatsoever in support of the denial of a claim arising under Constitutional or federal law, the Ninth Circuit has held that [this] court must perform an independent review of the record to ascertain whether the state court decision was objectively unreasonable. Himes v. Thompson, 336 F.3d 848, 853 (9th Cir. 2003).

Finally, it is the habeas petitioner's burden to show he is not precluded from obtaining relief by § 2254 (d). See Woodford v. Visciotti, 537, 19, 25 (2002).

II. JURISDICTION

The United States Supreme Court and the lower federal courts have jurisdiction over federal questions presented in state law proceedings. U.S. Const. Art. VI, cl. 2 (supremacy clause.) In state court criminal cases, the Supreme Court exercises this jurisdiction through its discretion to grant

writs of certiorari. (28 U.S.C. § 1254; U.S. Sup. Ct. R. 10-16); the lower federal courts have jurisdiction to hear habeas corpus petition brought by state prisoners. § 2254.

With rarely applicable exceptions, eligibility for federal review of a state court conviction requires the defendant to first seek relief in the state court of last resort--the highest state court in which the defendant is entitled to seek relief. 28 U.S.C. § 1257 (a); U.S. Sup. Ct. R. 13.1 (Certiorari.); 28 U.S.C. § 2254 (B)(1) (requiring exhaustion of state court remedies by habeas corpus petitioner's.) For defendants convicted of felonies, the court of last resort in the state of California is the California Supreme Court.

Here, in this case, as it is that petitioner has in fact exhausted all available state court remedies as so required of him, this court is thus the appropriate court of jurisdiction to hear and entertain this instant petition.

III. EXHAUSTION OF REMEDIES

As noted in the latter above (section II), petitioner has exhausted the state court remedies as so required of him pursuant to 28 U.S.C. § 2254 (b)(1)(A) in having presented the issues contained herein this instant petition infra to the California Supreme Court which denied relief as noted therein the statement of the case below infra.

IV. STATEMENT OF THE CASE

By way of information filed on February 27, 2002, petitioner was charged with two felony violations with gun and gang enhancement allegations charged therewith as fo-

llows: Count One: attempted (non-premeditated) murder (California Penal Code--P.C.) §§ 664/187[1/] where it was alleged that petitioner committed such crime for the benefit of a criminal street gang and where it was further alleged that petitioner personally used a gun in the commission of such crime (P.C. §§ 186.22 B and 12022.5) (CT 1-2.)[2/]; and Count Two: assault with a firearm on a person (P.C. § 245 (A)(2)) where it was alleged, as in count one, that petitioner committed such crime for the benefit of a criminal street gang, and where it was further alleged that petitioner personally used a gun in the commission of such crime (P.C. §§ 186.22 B and 12022.5). (CT 2-3.)

On May 28, 2002, petitioner entered negotiated no contest pleas to attempted (non-premeditated) murder and two (gun/gang) enhancement allegations where it was stipulated that petitioner would receive no more than 19 years in state prison. RT 3.

On June 27, 2002, petitioner was formally sentenced to 19 years in prison as follows: the low term of five years for the attempted murder charge, the middle term of four years for the gun use, and 10 years for the gang enhancement. RT 12 (254)-13 (255).

Petitioner filed a timely notice of appeal (CT 47) wherewhich he raised thereon appeal a sole claim concerning excessive restitution.

1/. All statutory references are to the penal code unless otherwise noted.

2/. CT stands for Clerks Transcripts on Appeal; RT stands for Reporters Transcripts on Appeal.

In an unpublished opinion filed in the latter part of 2003, the Sixth Appellate District Court of Appeal issued an order that petitioner's restitution fine be reduced.

Petitioner did not seek review from the California Supreme Court.

Petitioner ultimately filed a habeas corpus petition therein the Monterey County Superior Court in January of 2007, complaining of ineffective assistance of trial counsel, trial court abuse of discretion, and cumulative impact of error. Such petition was denied on March 23, 2007.

Petitioner then filed another habeas petition therein the Sixth Appellate District Court of Appeal presenting the same latter said issues wherewhich such petition was denied on May 10, 2007.

Petitioner then filed a habeas corpus petition therein the California Supreme Court presenting the same latter said claims wherewhich the petition was denied on October 10, 2007. This petition follows.

V. STATEMENT OF FACTS

On February 18, 2002, at approximately 4:30 p.m., police responded to a shooting where eyewitnesses reported gunshots being fired from a green car upon a black SUV at an intersection in Salinas, California. The victim of the shooting was taken to the Natividad Medical Center where police officials contacted him. CT 18.

The 17 year old victim and an RN employed there at the medical center informed police officials that while he (the victim) was stopped at a stop sign, he heard a "pop" followed

by the shattering of his front passenger window of the vehicle of which he was driving. CT 18.

Police later recovered a bullet therefrom the front passenger door. CT 18.

The victim said that as he drove away, he noticed that he could not feel his right arm. CT 18. He first drove to his girlfriend's house and then to his father's house. His father then drove him to the hospital where it was determined that his wound was not life threatening. CT 18. The bullet had entered just below the victim's right armpit causing injury to the surrounding tissue and muscle. CT 19. Hospital officials did not plan to remove the bullet. CT 19.

The victim admitted to being a member of a sub-faction of the Norteno Gang. According to Salinas police officials, he (the victim) is a registered member of the las Casitas gang. CT 18. However, the victim said he did not notice any gang signs or colors and that the shooter did not speak to him. CT 19.

A witness said the driver fired three to four shots at the black SUV from a green older model four-door car similar to a Cadillac. There were three people in the green car and the passengers therein ducked when the driver began shooting. CT 19

On February 24, 2002, at approximately 11:15 p.m., police contacted petitioner in a green four-door 1987 Cadillac parked at a Quik Stop market. Petitioner was seated in the driver's seat and at such time provided police with a California Identification Card. Petitioner's companion, Omar Mondragon, dumped

an item into the trashcan inside the store. Police located a loaded handgun inside the trashcan. Petitioner's car was then searched without incident where petitioner was then released. Petitioner's companion was placed under arrest. CT 19.

Police later realized that petitioner's car fit the description identified in the abovesaid shooting. A witness had provided a partial license plate number of UVT45 where petitioner's vehicle plates were 4UTV518. CT 19.

On February 26, 2002, at approximately 4 p.m., police contacted petitioner regarding his (suspected) vehicle. He was arrested for driving with a suspended license. CT 19. Upon searching the vehicle, police found a .25 caliber casing in the map pocket on the back of the driver's seat. Another .25 caliber casing was located inside the car. Police found two methamphetamine pipes in an unlisted location inside the car. CT 19.

Petitioner initially told police that on the day of the shooting, he drove and "Nigger" was responsible for the shooting. He then said that on an unknown date, he was walking in an alley at night and a black Blazer stopped nearby. One person from the vehicle put a gun to his head and placed a knife to his throat. CT 19. The attacker asked, "where are you from" and petitioner told him that he didn't "claim" and not to hurt him. CT 19-20.[3/] They called him a "little"

3/. Despite petitioner's equivocal stories, he nonetheless maintains his vehement stance to date, that he is not a gang member or associate of any gang whatsoever where to date, there exists no evidence to suggest otherwise. See Exhibit (Exh.) **C** attached hereto infra.

bitch and told him to get on his knees. They then got into the Blazer and drove away. CT 20.

On the day of the shooting, petitioner recognized the vehicle from the attack and became enraged at remembering how he was treated. Petitioner said that he was driving and someone called "Nigger" and Nigger's friend were passengers in the car. Nigger had a .25 caliber semi-automatic handgun. Petitioner reached over and grabbed the gun and fired the gun at the person in the SUV and then drove away. Petitioner said that he did not know if the person he fired upon was the same person who attacked him. CT 20.

Upon being interviewed at the Monterey County Jail, petitioner vehemently denied being a member of or an associate of the Sureno Gang or "any" gang. He denied telling jail staff that he was a Sureno at booking but said that jail officials took it upon themselves to list him as a gang member due to the shooting [victim being a "Norteno" gang member.] CT 20.

Petitioner said that he was with the wrong people at the wrong time. Petitioner stated: "I don't think it is right that I'm here and they are not" [referring to the other two occupants of his vehicle the day of the shooting.] CT 20.

Petitioner said that he let "Nigger" drive his car because he (petitioner) was under the influence of meth. A friend of Nigger was also in the car. CT 20.

Petitioner said he did not know "Nigger had a gun. Then Nigger shot at the person in the SUV and said the man was a Norteno. Petitioner said he told police the story about

being beat up in the alley but that it didn't happen." He said he was taking the rap for the safety of 'my' family and me." He said if he told the truth, he would have "another problem." CT 20.

The victim has since recovered from his injury and is not experiencing any continued problems from such injury. He also said that he would attend court. CT 21.

VI. GROUNDS FOR RELIEF

Petitioner avers that he is unlawfully restrained of his liberty by the California Department of Corrections and Rehabilitation (CDCR), specifically at the Correctional Training Facility (CTF), located in Soledad, California, where Ben Curry is Warden, pursuant to conviction(s) and sentence(s) of which he suffered in the Monterey County Superior Court under Case No. SS02937A. Petitioner conjunctly avers that such convictions/sentences should be set aside in habeas corpus for the following reasons/grounds:

I-A. **THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE INDUCED AND COERCED PETITIONER INTO PLEADING NO CONTEST BY GROSSLY OVERESTIMATING THE MAXIMUM PENALTY EXPOSURE FOR THE CRIMES OF WHICH PETITIONER WAS CHARGED THUS AND LIKEWISE GROSSLY MISCHARACTERIZING THE LIKELY OUTCOME AND POSSIBLE EFFECTS OF GOING TO TRIAL WAS OBJECTIVELY UNREASONABLE.**

I-B. **THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE ERRONEOUSLY STIPULATED TO THE FACTUAL BASIS OF THE PLEA AMID THERE BEING VIRTUALLY NO EVIDENCE TO SUPPORT THE GANG ALLEGATION WAS OBJECTIVELY UNREASONABLE.**

I-C. **THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL WAS DEFICIENT IN FAILING TO INVESTIGATE THE CASE BEFORE ADVISING PETITIONER TO PLEAD NO CONTEST WAS OBJECTIVELY UNREASONABLE.**

I-D. THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL WAS DEFICIENT WHEN HE FAILED TO PREPARE FOR TRIAL WAS OBJECTIVELY UNREASONABLE.

I-E. THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL WAS DEFICIENT WHEN HE FAILED TO ADVISE PETITIONER OF A POTENTIAL DEFENSE WAS OBJECTIVELY UNREASONABLE.

I-F. THE STATE COURT'S ADJUDICATION OF PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WAS CONTRARY TO/AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AND LIKEWISE AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED.

II-A. THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT THE TRIAL COURT ABUSED ITS DISCRETION IN HAVING FAILED TO ENSURE THAT AN ADEQUATE FACTUAL BASIS FOR THE PLEA EXISTED WAS OBJECTIVELY UNREASONABLE.

III-A. THE TRIAL COURT'S REJECTION OF PETITIONER'S CLAIM OF CUMULATIVE ERROR WAS OBJECTIVELY UNREASONABLE.

IV-A. THE STATE COURT'S FAILURE TO CONDUCT AN EVIDENTIARY HEARING WAS OBJECTIVELY UNREASONABLE.

VII. NO OTHER REMEDY AT LAW

Petitioner has no other plain, speedy, or adequate remedy in the ordinary course of the law to have entertained and heard, the claims contained herein this instant petition.

VII. PRAYER FOR RELIEF

WHEREFORE, petitioner prays for relief as follows:

1. For a writ of habeas corpus to issue directing the Director of the CDCR and petitioner's immediate custodian, to wit, Ben Curry, Warden at CTF, to bring petitioner before the appropriate court of jurisdiction to show then why his no contest plea should not be vacated.

2. For petitioner's no contest plea to ultimately be vacated.

3. For any other relief deemed appropriate and just by this court to be granted just the same, including, but not limited to, this court conducting an evidentiary hearing so as to resolve all mixed questions of law and fact and other issues that need resolving in such a hearing.

Executed on this 3 day of January, 2008.

By: _____

Jose Miguel Avalos
CDCR #T-62425 RA-321L
C.T.F. North Facility
P.O. Box 705
Soledad, Calif. 93960-0705

JOSE MIGUEL AVALOS
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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSE MIGUEL AVALOS, Petitioner, -vs- BEN CURRY, WARDEN, Respondent.	Case No._____ MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS

GROUND I-A.

THE STATE COURTS' REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE INDUCED AND COERCED PETITIONER INTO PLEADING NO CONTEST BY GROSSLY AND FALSELY OVERESTIMATING THE MAXIMUM PENALTY EXPOSURE FOR THE CRIMES OF WHICH PETITIONER WAS CHARGED THUS AND LIKEWISE GROSSLY MISCHARACTERIZING THE LIKELY OUTCOME AND POSSIBLE EFFECTS OF GOING TO TRIAL WAS OBJECTIVELY UNREASONABLE.

In rejecting petitioner's Ineffective Assistance of Counsel (IAC) claims based on gross mischaracterization/over-estimation of the penalty exposure, the state court(s) reasoned that: (1) petitioner's claims that trial counsel informed him he was facing a maximum of 69 years to life is wrong; (2) according to the waiver of rights/plea of no contest form that petitioner signed, he was advised that the maximum possible sentence he could receive was 24 years plus four years on parole; (3) petitioner failed to show

prejudice, i.e., failing to show that he was prepared to go to trial; and (4) given the disparity between the terms of the proposed plea bargain and probable consequences of proceeding to trial, petitioner's self-serving statement, after the fact, that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. See p. 2 of Super. Ct. Order denying Habeas Pet. attached hereto infra as Exhibit (Exh.) A (hereinafter "Exh. A.")

Petitioner avers however, as discussed more fully below, that the abovesaid reasoning is misplaced and thus must fail.

I-A-1. Petitioner's "Claim" of Being "Informed" By Counsel.

Simply put, far contrary to that which the state court(s) reasoned, petitioner's claim that he was informed by trial counsel that he faced a maximum sentence of 69 years to life for all of the crimes originally/initially charged prior to the court dismissing various counts pursuant to the plea bargain, is a valid claim amply supported by credible evidence.

For example, in addition to the credible and verified declarations of petitioner and his mother, Graciela Avalos (see Exh.'s B and C hereto), petitioner cogently outlined therein his state habeas petition(s)--as was explained to him by trial counsel--the maximum numerical penalty exposures as to each of the crimes of which he was initially charged. Particularly, petitioner outlined clearly that his counsel: (1) informed him and his mother/family and family pastor

(Exh.'s B-C) that the attempted murder count carried a maximum term of 25 years to life; (2) the gang enhancement alleged therewith the attempted murder charge carried a mandatory minimum term of 10 years; (3) the gun enhancement alleged therewith the attempted murder charge carried a maximum term of 10 years; (4) the assault with a firearm charge carried a maximum term of four years; (5) the gang allegation charged therewith the latter charge carried a mandatory minimum term of 10 years; and (6) the gun allegation alleged with the assault with a firearm charge carried a maximum term of 10 years--for a total of 69 years to life.

Besides the mere conclusory allegation to the contrary, the state court(s) failed to show that petitioner's "claim" is wrong.

I-A-2. <u>The Waiver of Rights Form</u>.

In diametric contrast to that which the state court(s) tend to imply, the waiver of rights/plea agreement form of which petitioner signed does not state the maximum sentence of which petitioner could receive for all of the crimes of which he was initially charged with prior to his entering a plea bargain. The waiver of rights form at best, states the maximum sentence for the crimes of which petitioner pleaded no contest to and nothing more. Exh. D hereto. In fact, the maximum sentence depicted thereon the waiver of rights form appears to be wrong and off base. First, while the form states a "maximum of 24 years," any combined configuration of the sentences for the crimes stated thereon

such form does not meet up to a maximum of 24 years. The attempted murder charge of which petitioner pleaded no contest to carries terms of five, seven, and nine years; the gang allegation carries a mandatory term of 10 years; and the gun allegation carries terms of three, four, and 10 years. Accordingly, any combined mathematical configuration of either of the abovesaid sentences simply fail to pan out to a 24 year term (maximum or minimum or intermediate-wise.)

Finally, even assuming arguendo that the assault with a firearm charge and its corresponding gang/gun allegations were to be incorporated therein the 24 year maximum sentence, such "incorporation" still fails to pan out to a 24 year sentence under any legal configuration. Being so, the state court's contrary reasoning is clearly misplaced, and thus must fail.

I-A-3. Prejudice and Preparedness to Go to Trial.

The state court(s) tends to imply therein its reasoning that petitioner's failure to show that he was prepared to go to trial equals a failure to show prejudice. The state court is wrong.

To establish prejudice as to a claim of IAC in the context of a guilty plea, the petitioner must allege and show that there is a reasonable probability that, but for counsel's errors, he would have insisted on going to trial. **Hill v. Lockhart, 474 U.S. 58-60 (1985).** To be sure, a petitioner need not show that he would have prevailed at trial, only that there was a reasonable probability that

he "would have gone to trial." **U.S. v. Hanson**, **339 F.3d 991 (D.C. Cir. 2003).**

In this instant case, the state court failed to point to any authority that suggests that a petitioner must show that he was "prepared" to go to trial in order to show prejudice in the context of a guilty plea. Moreover and more importantly, petitioner alleged and showed with clarity and particularity (**Hill**, at pp. **58-60**) that there was more than a reasonable probablility he would have insisted on going to trial had he been correctly informed by counsel.

I-A-4. Disparity and Petitioner's Self-Serving Statement.

Incorporating Ground I-A-2 supra by reference as if rewritten herein, the waiver of rights form fails to depict the actual disparity between the proposed plea bargain and consequences of petitioner proceeding to trial for "all" of the crimes of which he was initially charged with prior to the plea bargain. In fact, as explained ante, the waiver of rights form fails to even depict the correct disparity and consequences for the charges involved in the plea agreement.

Further, the state fails to point to any authority in support of its stance that "after the fact" statements and declarations as a whole, let alone, those of petitioner's and his mother's, are insufficient per se, to sustain a [petitioner's] burden of proof as to prejudice. Put another way, the fact that the record in this case fails to contain an on-the-record "before the fact" statement

contesting the plea does nothing in the least to negate petitioner's claim or to bolster the state's claim. Accordingly, the state court's contrary reasoning must fail.

GROUND I-B.

THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE ERRONEOUSLY STIPULATED TO THE FACTUAL BASIS OF THE PLEA AMID THERE BEING VIRTUALLY NO EVIDENCE TO SUPPORT THE FACTUAL BASIS AS TO THE GANG ALLEGATION WAS OBJECTIVELY UNREASONABLE.

In rejecting petitioner's IAC claim concerning trial counsel's erroneous stipulation as alleged in the caption above, the state court reasoned that: (1) petitioner failed to show that counsel's performance was deficient; (2) petitioner voluntarily pled nolo contendre, thereby admitting the crimes as indicative of the waiver of rights form; (3) per the waiver form and the oral admonitions of the trial court, petitioner was advised that he would be giving up certain rights; (4) after petitioner was questioned, the court found that he understood the nature of the charge and possible penalties and other consequences of the plea; and (5) petitioner stated on the record that he had read and understood the acknowledgement of the waiver form. See Exh. A at p. 3.

As explained more fully below, petitioner avers that the abovesaid reasoning is misplaced, and thus must fail.

I-B-1. Counsel's Performance.

As petitioner pointed out therein his state habeas petition(s), counsel engaged in a bare stipulation as to the factual basis of the charges involved in the plea

bargain. Specifically, counsel merely stated, in response to the trial court's inquiry: "stipulate there's a factual basis for the plea." RT 4. Based on such response, the trial court found there to be an adequate factual basis for the plea. Petitioner went on, therein his state habeas petition(s), to note via a plethora of supportive case authority, that counsel's bland stipulation to the factual basis without referencing any particular document was unquestionably deficient performance. See e.g., **People v. Holmes**, 9 Cal. Rptr.3d 683-684 (2004); **People v. Watts**, 136 Cal. Rptr. 496 (1977). Particularly in **Watts**, the sole reference to the factual basis came in a statement by **Watts's** attorney, who stated that he advised **Watts** of the legal consequences of a guilty plea. **Id.** at p. 496. The **Watts** court found this statement insufficient to meet the requirements of **California Penal Code (P.C.) § 1192.5.** ["Such a stipulation reveals no more of a factual basis supporting the plea than the plea itself."] **Holmes, supra** at p. 685 **fn.8; People v. McGuire, 1 Cal. Rptr.2d 846.** Although the **Watts** court found counsel's "bare stipulation" error, it nonetheless found such error harmless in that there was ample documentation contained therein the record to provide a sufficient factual basis for the plea. **Watts, supra** at p. 496.

In this case, counsel, presumably cognizant of such longstanding (**Watts**) authority, undoubtedly should have ensured that an adequate factual basis existed by way of

referencing some document of the record that contained the same--especially given the fact that, unlike **Watts**, the documentation containing a sufficient factual basis in this case was not ample, but in fact, virtually nonexistent. For example: (1) there was never a preliminary hearing conducted in this case, thus there exists no transcript of the same to reference; (2) a detailed perusal of the police reports in this case fail to establish an adequate factual basis for the plea--namely with regards to the gang allegation; (3) the probation report, at most, merely suggests that petitioner associated with unspecified "Surenos" therein the jail post crime--and nothing more; (4) the charging information itself fails to provide an adequate factual basis, namely with regards to the gang allegation, in that its mere citing of "SURENO" simply fails (see **People v. Valdez**, **68 Ca. Rptr.2d 144 (1997)**; (5) the waiver of rights form merely states the statutory codes of which petitioner pled to and nothing more; and (6) petitioner's "bare admission" in court to the gang allegation (at the prodding of counsel's deficient advice as outlined herein ante) simply fails where the court's inquiry to petitioner was merely: "...and this was done to assist the criminal conduct of 'a gang'...." (See **Valdez**, **supra** at p. **144.**) Also see **In re Alvernez**, **8 Cal. Rptr.2d 718 (1992)** (quoting **People v. West**, **91 Cal. Rptr. 385**--a plea of nolo contendre [does not admit] a factual basis of a plea.)

Accordingly, counsel's stipulation was deficient

performance.

I-B-2. Petitioner's Right to Participate in the Stipulation.

Great effort is not required to realize that establishing a factual basis for a guilty plea is a fundamental aspect of the operations of plea bargains. Simply put, without a factual basis being established, the plea bargain would be unenforceable. Because of the fundamental nature inherent within the establishment of a factual basis, a defendent, as such, possesses a constitutional right to actively participate in such factual basis. "[A] defendant possesses a constitutionally protected right to participate in the making of certain decisions which are fundamental to his or her defense." **In re Alvernez, supra** at p. 721 (quoting **Jones v. Barnes, 463 U.S. 745, 751 (1983); Johnson v. Duckworth, 793 F.2d 898, 900-901 (7th Cir. 1986).)** Moreover, the court in **Strickland v. Washington, 466 U.S. 688 (1984)** explained that counsel's responsibilities incident to ensuring a fair trial include "the overreaching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of the important developments of the prosecution."

In this case, the act of stipulating to the factual basis of petitioner's plea was unquestionably a decision fundamental to his criminal proceedings. Being so, petitioner possessed a vested right to participate in the stipulation at instant issue. Yet, due to counsel's deficient

performance, petitioner was deprived of such right to participate in such stipulation. The only stipulation of which petitioner acknowledged and participated in was with regards to the court's mere recitation of the "19 year stipulated sentence"--and nothing more. Had counsel explained to petitioner what adequately constituted a factual basis and as well, informed him of his right to participate, it is quite probable--given the broad and grave magnitude of counsel's deficient and prejudicial performance outlined thus far herein--that petitioner would not have agreed to such stipulation, but instead would have expressed vehement opposition to the same--namely with regards to the gang allegation.

I-B-3. Petitioner's Purported Failure to Show Prejudice.

For the same reasons discussed herein ante, the state court's claim, in the context of which it reasoned, as to petitioner's purported failure to show prejudice with regards to Claim I-B herein, simply fails.

GROUND I-C.

THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE FAILED TO INVESTIGATE THE CASE BEFORE ADVISING PETITIONER TO PLEAD NO CONTEST WAS OBJECTIVELY UNREASONABLE.

In rejecting petitioner's IAC claim of counsel failing to investigate the case, the state court reasoned that: (1) even assuming arguendo that counsel's performance was deficient, petitioner failed to show prejudice by failing to (i) show that he was prepared to go to trial; and (ii)

given the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, petitioner's self-serving statement that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. See Exh. A at p. 4.

As explained more fully below, the state court's abovesaid reasoning is wrong.

I-C-1. Prejudice.

Incorporating Ground I-A through I-B supra by reference as if rewritten herein, petitioner has colorably established thus far that the state court's stance concerning prejudice is simply off-base. Because so, such stance must be rejected.

GROUND I-D.

THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE FAILED TO PREPARE FOR TRIAL WAS OBJECTIVELY UNREASONABLE.

The state court(s) rejected this aspect of petitioner's IAC claims by reasoning that: (1) petitioner voluntarily chose to enter a plea instead of going to trial; and (2) to the extent this claim relates to petitioner's [failure to investigate] claim, this claim fails for the same [prejudice] reasons. See Exh. A at p. 4.

Petitioner avers, as discussed more fully below, that the abovesaid reasoning is misplaced and thus must fail.

I-D-1. Petitioner's Voluntary Choice to Enter a Plea.

Incorporating Ground I-A through I-C supra by reference as if rewritten herein, petitioner has evinced with clarity that his choice to enter a plea instead of going to trial

is a choice that is rendered involuntary due to trial counsel's deficient performance. Simply put, had petitioner been correctly informed by counsel as to the correct characterizations of his sentencing exposure, coupled with the fact had counsel properly investigated the case and prepared for trial--namely with regards to the gang allegation--petitioner unquestionably would have insisted on proceeding to trial. See Petitioner's verified declaration hereto. Yet, even amid the above, the state court(s) tend to conveniently ignore the fact that petitioner's "voluntary choice" to plead as he did in this case is severely undermined by counsel's deficient and prejudicial performance. Any contrary reasoning must fail.

I-D-2. Prejudice.

For reasons explained at length ante, the state court's repeated and echoing "failure to show prejudice" claim must fail.

GROUND I-E.

THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT TRIAL COUNSEL PROVIDED DEFICIENT PERFORMANCE WHEN HE FAILED TO ADVISE PETITIONER OF A POTENTIAL DEFENSE WAS OBJECTIVELY UNREASONABLE.

In rejecting petitioner's claim that trial counsel failed to advise him of a potential defense, the state court reasoned that: (1) petitioner failed to identify specifically what defense existed; (2) petitioner failed to show the defense, if any, that would have succeeded at trial; and (3) assuming arguendo that counsel's performance was deficient, petitioner failed to show prejudice. See Exh. A at p. 4.

As discussed more fully below, petitioner avers that the state court's abovesaid reasoning is misplaced, and thus should be rejected.

I-E-1. Specific Potential Defense(s).

As petitioner credibly outlined therein his state habeas petitions, there was virtually no evidence of substantial worth to support a true finding of the gang allegation. As such, far contrary to that which the state court(s) surmised, the very (potential) defense amply identified therein petitioner's state habeas petitions was that of "Insufficient Evidence" to support every element of the gang allegation.

I-E-2. Likelihood of Success at Trial.

The very fact that there was virtually no evidence of credible worth to support every element of the gang allegation in this case renders the defense of "Insufficient Evidence" a defense that more than probably would have succeeded at trial. As petitioner duly explained therein his verified state habeas petitions, petitioner has absolutely no history of gang involvement; and the victim himself stated unequivocally that he did not notice any gang signs or hear any gang slogans at the time of the shooting. Moreover, petitioner had tangibly available for trial counsel's convenient disposal, a plethora of character witnesses who could/would have shedded substantial "light" in support of such defense--all of which counsel failed to, inter alia, investigate. See Exh. **E** hereto.

Finally, the record evidence in this case painfully fails to show a modicum of credible evidence to support the gang allegation.

Accordingly, it is more than likely that petitioner's defense as to the gang allegation would have succeeded at trial.

I-E-3. Prejudice.

For reasons explained at length ante, the state court's replicated stance of petitioner purportedly having "failed to show prejudice" simply fails.

GROUND I-F.

THE STATE COURT'S CONTRARY TO/UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW/UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED AS TO PETITIONER'S IAC CLAIMS.

The clearly established federal law that governs petitioner's IAC claims is that of **Strickland v. Washington**, **supra** at p. **668**; **Hill v. Lockhart**, **supra** at pp. **52, 58-60.**

Under **Strickland**, to establish ineffective assistance of counsel, a convicted defendant must show: (1) that his counsel's performance was deficient and fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense, i.e., that there is a reasonable probability that, but for counsel's unprofessional performance, the result of the proceeding would have been different. **Strickland**, at pp. **687, 691-692.** Although trial counsel's decisions are entitled to deference to avoid second guessing tactical choices, deference is not abdication

and must never be used to insulate counsel's performance from meaningful scrutiny. **Ibid**.

Guided by the two prong analysis set forth in **Strickland**, to establish IAC in the context of a guilty plea, the petitioner must show that counsel's advice was defective and prejudicial. **Hill**, **supra** at pp. **52, 59.** To show prejudice, the petitioner must allege and show that there is a reasonable probability that, but for counsel's errors, he would have not pleaded guilty [but instead] would have insisted on going to trial. **Hill**, **supra** at pp. **58-60.** To be sure, a petitioner need not show that he would have prevailed at trial, only that there was a reasonable probability that he "would have gone to trial." **U.S. v. Hanson**, **supra** at p. **991.**

In this case, incorporating Ground I supra in its entirety by reference as if rewritten herein, petitioner has colorably shown that the state court's tacit application of controlling federal law as to petitioner's IAC claims was clearly both, contrary to, and an unreasonable application of clearly established federal law, and likewise, an unreasonable determination of the facts in light of the evidence presented. For example, the state court repeatedly relied upon a "prejudice analysis", i.e., petitioner not having shown he was prepared to proceed to trial, that was clearly contrary to the clearly established federal (prejudice analysis) law of **Hill**. Moreover, the state court failed to point to any authority that supports its version of

prejudice.

As to the state court's eventual identification of the correct (federal) prejudice analysis, that is, the need for petitioner to show that he would have insisted on proceeding to trial (**Hill**, **supra** at pp. **58-60**), its application of such federal law, as cogently explained at length ante, was nonetheless simply unreasonable.

Finally, given the facts of this case as they favorably support petitioner's overall stance, the state court's determination of the same in light of the evidence presented in this case, was objectively unreasonable.

GROUND II-A.

THE STATE COURT'S REJECTION OF PETITIONER'S CLAIM THAT THE TRIAL COURT ABUSED ITS DISCRETION IN HAVING FAILED TO ENSURE THAT AN ADEQUATE FACTUAL BASIS FOR THE PLEA EXISTED WAS OBJECTIVELY UNREASONABLE.

In rejecting petitioner's claim of trial court abuse of discretion as captioned above, the state court reasoned: (1) the trial court made an inquiry to petitioner to satisfy itself that the plea was freely and voluntarily made and that there was a factual basis for the plea; (2) petitioner filled out, initialed, and signed a two-page superior court no contest plea form; (3) trial counsel stipulated there was a factual basis for the plea; and (4) the trial court properly accepted the factual basis for the plea. See Exh. A at p. 5.

Petitioner avers, as discussed more fully below, that the abovesaid reasoning is misplaced, and thus must fail.

II-B. **The Trial Court's Inquiry**.

Petitioner set forth a landscape of persuasive authority therein his state habeas petitions, e.g., **United States v. Van Buren**, 804 F.2d 888, 892 (6th Cir. 1986) and **People v. West**, **supra** at p. 385 to support substantially, his overall position at instant issue. For example, the court in **Van Buren** held that: ["]Reading of indictment and defendant's admission of guilt is not sufficient factual basis determination...." **Van Buren**, **at p.** 892. Moreover, the court **in West** noted that a plea of nolo contendre [does not admit] the factual basis of a plea. **West**, at p. 385.

In this case, the state court's contention that the trial court's overall inquiry to petitioner was sufficient is simply unavailing--especially in light of the grave and poor performance of trial counsel as outlined herein ante (all of which renders petitioner's admission involuntary.)

Moreover, the trial court's failure to reference any other document(s) of the record in an effort to garner a factual basis as petitioner has shown ante that relevant case authority suggests, serves to undermine even more, its mere and bland inquiry to petitioner.

Finally, because petitioner was statutorily entitled to have the court reference other documents to establish a factual basis **for** the plea--amid the particular circumstances of this case--and because the trial court deprived petitioner of such state law entitlement, such deprivation, as explained more fully post, infringed upon

petitioner's substantial rights.

II-C. Petitioner's Signing of the Waiver Form.

Incorporating Ground I supra in its entirety by reference as if rewritten herein, petitioner has adequately argued that the mere fact of his signing the waiver of rights form does nothing to undermine his claims--especially given the egregious and infirm performance of trial counsel duly explained ante. The state court's contrary reasoning thus must fail.

II-D. Counsel's Stipulation.

Incorporating Ground I supra in its entirety by reference as if rewritten herein, petitioner has adequately shown with clarity that trial counsel's bland stipulation to the factual basis of the plea was gravely infirm.

II-E. The Trial Court's Acceptance of the Factual Basis.

The trial court's acceptance of the factual basis of the plea in this case via counsel's bland stipulation is infirm. As discussed above, and herein passim, counsel's bland stipulation was egregious and ineffective; and the trial court's failure to reference any documents in the record as statutorily mandated only exacerbates counsel's ineffectiveness. Any contrary reasoning should be rejected.

II-F. Unreasonable Application of Federal Law.

The clearly established federal law that governs petitioner's claim of trial court abuse of discretion in the context of which he alleged, is that of **Hicks v. Oklahoma, 447 U.S. 343, 346 (1980).** Habeas relief will only lie for

violation of a state rule if the alleged violation denie[s] [a defendant] his due process right to fundamental fairness. See **Laboa v. Calderon**, **224 F.3d 972 (9th Cir. 2000)** (quoting **Estelle v. McGuire**, **502 U.S. 62, 72-73.**) A state violates a criminal defendant's due process right to fundamental fairness if it arbitrarily deprives the defendant of a state law entitlement. **Hicks**, at pp. **343, 346.**

In this case, petitioner has colorably shown ante that he was statutorily entitled to have an adequate factual basis established before execution of the plea bargain. More importantly, petitioner has equally shown that by way of counsel's deficient performance in conjunction with the trial court's discretional abuse, he was deprived of such state law entitlement, hence, denied his due process right to fundamental fairness.

With the state courts presumably aware of the latter, and likewise, aware of the clearly established federal law that governs this instant claim, its rejection of the same resulted in an unreasonable application of the abovesaid clearly establised (**Hicks**) federal law, and likewise, an unreasonable determination of the facts in light of the evidence presented. For these reasons, any contrary reasoning must fail.

GROUND III-A.

THE TRIAL COURT'S REJECTION OF PETITIONER'S CLAIM OF CUMULATIVE ERRORS WAS OBJECTIVELY UNREASONABLE.

The state court's rejection of petitioner's claim of cumulative error was based on the purported fact that petitioner failed to show that his trial counsel provided ineffective assistance, and failed to show that the trial court abused its discretion. See Exh. A at p. 5.

As discussed more fully below, the abovesaid reasoning is wrong.

First, incorporating Ground I and II supra by reference as if rewritten herein, it has been well evinced that petitioner both, received ineffective assistance of counsel of a prejudicial magnitude, and likewise, the trial court having abused its discretion of the same magnitude. As such, the abovesaid errors undoubtedly, under cumulation, resulted in a harmful infringement thereupon petitioner's substantial rights.

Next, in **U.S. v. Frederick, 78 F.3d 1370, 1381 (9th Cir. 1996)**, the court noted and realized [that]: "a balkanized, issue-by-issue harmless error review" is far less effective than analyzing the overall effect of all the errors in the context of the evidence introduced against the defendant. **Id.** at p. **1381** (quoting **United States v.- Wallace, 48 F.2d 1464, 1476 (9th Cir. 1988).**") In other words, "'[e]rrors that might not be so prejudicial as to amount to a deprivation of due process when considered alone, may cumulatively produce a trial setting that is fundamentally

unfair.'" **Thomas v. Hubbard**, 273 F.3d 1164, 1180 (9th Cir. 2001). "In those cases where the government's case is weak, a defendant is more likely to be prejudiced by the effect of the cumulative errors." **Frederick**, **supra** at p. 1381.

In this case, not only was the government's case weak, but the errors of trial counsel and the trial court, in both, isolation, and under cumulation, rendered petitioner's court proceedings fundamentally unfair. Also see **Harris v. Wood**, 64 F.3d 1438 (9th Cir. 1995).

GROUND IV-A.

THE STATE COURT'S FAILURE TO CONDUCT AN EVIDENTIARY HEARING WAS OBJECTIVELY UNREASONABLE.

Although the state court mentions nothing therein its reasoned opinion (See Exh. A hereto) in denying petitioner's habeas petition concerning petitioner's request for an evidentiary hearing, petitioner avers that its refusal to do so was error.

Under **AEDPA**, if a petitioner fails to develop in state court the factual basis for a claim, he is restricted in his ability to do so in federal court. See **28 U.S.C. § 2254 (e)(2).** However, a federal habeas corpus petitioner is entitled to an evidentiary hearing where the petitioner establishes a "colorable" claim for relief and where the petitioner has never been accorded a state or federal hearing on his claims. See **Earp v. Oronski**, 431 F.3d 1158, 1167 (9th Cir. 2005) (citing **Townsend v. Sain**, 372 U.S. 293 (1963); **Keeney v. Tamayo-Reyes**, 504 U.S. 1, 5 (1992).) In showing a colorable claim, a petitioner is "required to

allege specific facts, which, if true, would entitle him to relief." **Ortiz v. Stewart, 149 F.3d 923, 934 (9th Cir. 1988).** Moreover, the aforesaid restrictions of the **AEDPA** do not apply if a petitioner exercised due diligence in state court and attempted to develop the factual basis of his claim. As the Supreme Court has explained, "a failure to develop the factual basis of a claim is not established unless there is a lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel." **Williams v. Taylor, 529 U.S. 420, 432 (2000).** The court further noted that "[d]iligence will require in the usual case, that the prisoner, at minimum, seek an evidentiary hearing in state court in the manner prescribed by law." **Id.** at p. **437.** Additionally, to be clear, the court in **Townsend**, at p. **313**, establish[ed] that a defendant is entitled to an evidentiary hearing if he can show that:

> (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the factfinding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence; (5) the material facts were not adequately developed at the state court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair hearing. **Ibid.**

If the defendant can establish either of the abovesaid circumstances, then the state court's decision was based on an unreasonable determination of the facts and the habeas (federal) court can independently review the merits of that decision by conducting an evidentiary hearing. See **Taylor**

v. Maddox, **366 F.3d 992, 1001 (9th Cir. 2004)** ("if, for example, a state court makes evidentiary findings without holding a hearing giving the petitioner an opportunity to present evidence, such finding clearly results in an 'unreasonable determination' of the facts.")

In this instant case, incorporating Grounds I-III supra by reference as if rewritten herein, petitioner has clearly set forth colorable claims for relief, i.e., allegations of specific facts, which if true, would entitle him to relief. More notably, petitioner has done all within the ambit of his power to develop the factual basis for his claims. Particularly, petitioner has proffered the state court(s) the factual basis for both, his IAC claims and his claim of trial court abuse of discretion. Petitioner likewise, has attempted to have such claims subjected to an evidentiary hearing therein the state courts via his habeas petitions to no avail.

Furthermore, as to petitioner's overall claims presented herein, he avers that the bulk of the **Townsend** prongs apply to the particular facts and circumstances of his case, thereby rendering the state court's failure to conduct an evidentiary hearing as that of an unreasonable determination of the facts.

Finally, because petitioner's claims presented herein present mixed questions of law and fact--namely his IAC claims--and because to date, there has never been an evidentiary hearing held to resolve such mixed questions of law and fact, the presumption of correctness clause cannot

safely lie in this case. See **Seidal v. Merkle**, 146 F.3d 750 (9th Cir. 1998); 28 U.S.C. § 2254 (e)(2).

Accordingly and in sum, the state court's failure to conduct an evidentiary hearing as requested by petitioner was objectively unreasonable warranting any contrary reasoning to be rejected.

CONCLUSION

For all of the foregoing reasons stated herein and those of the Exhibits hereto, the sought for relief formally requested infra should be granted.

Respectfully submitted,

By: _____

Jose Miguel Avalos
CDCR #T-62425 RA-321L
C.T.F. North Facility
P.O. Box 705
Soledad, Calif. 93960-0705

VERIFICATION

I, **Jose Miguel Avalos**, hereby declare and affirm under penalty of perjury that all of the foregoing is true and correct, and that I am a party to the instant action, to wit, the petitioner.

Executed on this 3 day of January, 2008.

By: _____

Jose Miguel Avalos
CDCR #T-62425 RA-321L
C.T.F. North Facility
P.O. Box 705
Soledad, Calif. 93960-0705

EXHIBIT "A"

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

In re Jose M. Avalos On Habeas Corpus.	Case No.: HC 5570 ORDER

On January 23, 2007, Petitioner Jose M. Avalos filed a petition for writ of habeas corpus. Petitioner is currently incarcerated at the Correctional Training Facility in Soledad.

This petition concerns the underlying case of *People v. Jose M. Avalos*, Monterey County Superior Court, Case No. SS020937A. Petitioner entered a plea of no contest to attempted murder and admitted allegations under sections 186.22(b) and 12022.5 with the understanding he would receive a stipulated sentence of 19 years in prison. The trial court, thereafter, sentenced Petitioner to 19 years in prison he stipulated to and imposed a restitution fine of $3,800 and a suspended parole revocation fine of $3,800. Petitioner filed a notice of appeal. On appeal, Petitioner contended that the fines were in excess of the terms of the plea bargain. He requested that the court reduce each fine to the statutory minimum of $200. The People conceded the issue and the appellate court agreed that the concession was appropriate. The appellate court modified the judgment to reduce the restitution and parole revocation fines to $200. As so modified, the judgment was affirmed.

In the instant petition, Petitioner makes the following claims: 1) Petitioner's trial counsel, Kevin Hyatt, rendered ineffective assistance; 2) the trial court abused its discretion by failing to ensure that an adequate factual basis for the plea existed; and 3) there was cumulative error.

A criminal defendant has a federal and state constitutional right to the effective assistance of counsel. To establish a claim of incompetence of counsel, a defendant must establish both

that counsel's representation fell below an objective standard of reasonableness and that it is reasonably probable that, but for counsel's error, the result of the proceeding would have been different. *Strickland v. Washington* (1984) 466 U.S. 668, 686-688, 694-695; *People v. Ledesma* (1987) 43 Cal.3d 171, 215-218.

In determining whether a defendant, with effective assistance, would not have accepted the offer, pertinent factors to be considered include: whether counsel actually and accurately communicated the offer to the defendant; the advice, if any, given by counsel; the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, as viewed at the time of the offer; and whether the defendant indicated he or she was amenable to negotiating a plea bargain. In this context, a defendant's self-serving statement--after trial, conviction, and sentence--that with competent advice he would not have accepted a proffered plea bargain, is insufficient in and of itself to sustain the defendant's burden of proof as to prejudice, and must be corroborated independently by objective evidence. *In re Alvernaz* (1992) 2 Cal.4th 924, 938.

Petitioner claims that his counsel rendered ineffective assistance by miscalculating the maximum penalty he was facing. Petitioner claims that his counsel informed him that he was facing a maximum sentence of 69 years to life. This claim is wrong. According to the Waiver of Rights, Plea of Guilty/No Contest Petitioner signed, he was advised that the maximum possible sentence he could receive was 24 years plus 4 years on parole. (See Waiver of Rights, Plea of Guilty/No Contest.) Moreover, Petitioner has failed to show prejudice. Petitioner has failed to show he was prepared to go to trial. Given the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, Petitioner's self-serving statement, after the fact, that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. *Alvernaz, supra*, 2 Cal.4th at p. 938.

Petitioner claims that his counsel rendered ineffective assistance by stipulating to the factual basis for the section 186.22(b) allegation. He also claims that his counsel rendered ineffective assistance by failing to ensure that Petitioner participated in the stipulation to the factual basis for the plea. These claims fail.

Petitioner has failed to show his counsel's performance was deficient. Petitioner voluntarily pled nolo contendere to attempted murder and admitted the allegations under sections 186.22(b) and 12022.5 pursuant to the plea agreement. (See Waiver of Rights, Plea of Guilty/No Contest.) The court made an inquiry to Petitioner to satisfy itself that the plea was freely and voluntarily made, and that there was a factual basis for such plea. Before entering the plea, Petitioner was advised that on entering a plea of nolo contendere, he would be giving up certain rights. After Petitioner was questioned, the court found that he understood the nature of the charge and the possible range of penalties and other consequences of his plea. Petitioner stated on the record that he had read and understood the acknowledgment of waiver of rights form. Petitioner filled out, initialed and signed a two-page superior court guilty/no contest plea form. The plea contains the following statements: 1) Petitioner understood that he was pleading no contest to the offense of Penal Code sections 664/187; 2) Petitioner understood that he was admitting the enhancements under sections 186.22(b)(1) and 12022.5; 3) Petitioner offered his plea freely and voluntarily and of his own accord and with full understanding of all matters set forth in the Information and in the waiver; 4) Petitioner had personally initialed each box and he understood each right outlined in the plea and he waived and gave up each right in order to enter the plea; and 5) Petitioner was entering a plea of no contest because he was in fact guilty. Petitioner's counsel signed the plea, indicating that he had explained Petitioner's rights and had explained and discussed the facts and possible defenses to the charges, and the possible consequences of the plea. The court found that Petitioner understood and knowingly, voluntarily and intelligently waived his rights, and that there was a factual basis for the plea.

Moreover, Petitioner has failed to show prejudice. Petitioner has failed to show he was prepared to go to trial. Given the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, Petitioner's self-serving statement that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. *Alvernaz*, *supra*, 2 Cal.4th at p. 938.

Petitioner claims that his counsel rendered ineffective assistance by failing to investigate his case. Assuming arguendo his counsel's performance was deficient, Petitioner has failed to show prejudice. As discussed above, Petitioner has failed to show he was prepared to go to trial. Given the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, Petitioner's self-serving statement that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. *Alvernaz*, *supra*, 2 Cal.4th at p. 938.

Petitioner claims that his counsel rendered ineffective assistance by failing to adequately prepare for trial. This claim fails. Petitioner voluntarily chose to enter a plea instead of going to trial. To the extent that this claim relates to Petitioner's other claim that his counsel failed to investigate the case, this claim fails for the same reason.

Petitioner claims that his counsel rendered ineffective assistance by failing to advise him of potential defenses. Petitioner fails to identify specifically what defenses existed. Assuming arguendo Petitioner's counsel's performance was deficient, Petitioner has failed to show prejudice. Petitioner has failed to show the defenses, if any, that would have succeeded at trial. Given the disparity between the terms of the proposed plea bargain and the probable consequences of proceeding to trial, Petitioner's self-serving statement that he would have insisted on going to trial is insufficient to sustain his burden of proof as to prejudice. *Alvernaz*, *supra*, 2 Cal.4th at p. 938.

Petitioner claims that the trial court abused its discretion when it failed to ensure that an adequate factual basis for the plea existed. This claim is without merit. As discussed above in detail, the court made an inquiry of Petitioner to satisfy itself that the plea was freely and voluntarily made, and that there was a factual basis for such plea. Petitioner filled out, initialed, and signed a two-page superior court no contest plea form. His counsel stipulated there was a factual basis for the plea. The trial court properly accepted the factual basis for the plea.

Petitioner's claim of cumulative error fails. As discussed above, Petitioner has failed to show that his counsel rendered ineffective assistance of counsel. He has also failed to show that the trial court abused its discretion by failing to ensure that an adequate factual basis for the plea existed. Consequently, Petitioner has failed to show there was cumulative error.

For the foregoing reasons, the petition is denied.

IT IS SO ORDERED.

Dated: 3-23-07

Hon. Jonathan R. Price
Judge of the Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re JOSE MIGUEL AVALOS,

on Habeas Corpus.

H031370
(Monterey County
Super. Ct. No. HC5570)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., and Duffy, J., participated in this decision.)

Dated MAY 10 2007

PREMO, J. Acting P.J.

S152952

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re JOSE MIGUEL AVALOS on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)

GEORGE
Chief Justice

EXHIBIT "B"

DECLARATION OF GRACIELA AVALOS

I, Graciela Avalos, hereby declare and affirm under penalty of perjury and the laws of the State of California and the United States of America as follows:

1. I am a citizen of the United States of America and a resident of the State of California currently residing in Salinas California in the County of Monterey. I am over the age of 18 years and competent to testify as follows:

2. I am the mother of Jose Miguel Avalos. In February of 2002, when I learned that Jose had been arrested for shooting someone and that the shooting was gang related, I found it quite difficult to believe.

3. Jose has never been into any criminal activities or gangs. He had never been in trouble with the law and he has always been a good child and never really gave me any significant "problems" of any sort. I have always had him "into church" and he is genuinely a God fearing person.

4. Upon my invoking/hiring the services of the Chase law Group, specifically attorney Kevin Hyatt, I was told/advised by another attorney who appeared to be an associate/representative of Mr. Hyatt, to wit, Steve (Davidson), that if "I really loved my son, I had to pay Fifteen Thousand Dollars ($15,000.00) to Mr. Hyatt in two payments in order to initiate Jose's case. I was also told by "Steve" that per the abovesaid payment(s), Jose's case would be defended "100%."

5. I ultimately paid the abovesaid fee specifically for the services of Mr. Hyatt. Despite so, Mr. Hyatt only showed

up to Jose's court dates approximately three times, i.e., at the stage of Jose's sentencing and approximately twice prior to such sentencing.

6. Another attorney named "Matthew", who apparently was also "from" the Chase Law Group, appeared at Jose's court dates on Mr. Hyatt's behalf far more than Mr. Hyatt himself (or anyone else attorney-wise.) "Steve" appeared at Jose's court dates periodically, but not as often as did Matthew. I never hired Matthew or Steve.

7. I was also informed by Jose that Mr. Hyatt's first "contact" with him (therein the jail) was for approximately ten minutes only, where Mr. Hyatt merely outlined all of the "evidence against" Jose. Jose further informed me that all other subsequent visits he received from Mr. Hyatt were for less than three minutes each and soley based on Mr. Hyatt attempting to persuade Jose to accept a 21 year prison deal for attempted murder, a gun charge, and a gang charge.

8. Jose further informed me that at each of the above-said vists, his attempts to tell Mr. Hyatt his side of the story were thwarted by Mr. Hyatt shunning him and telling him that he was facing life in prison and that there was "no story" that could save him. Jose further informed me that Mr. Hyatt never at anytime discussed the "ins and outs" of his case or any parts of the case in any fashion. Mr. Hyatt based each of his visits on trying to persuade him (Jose) to accept the 21 years and never discussed a defense(s) or any other options besides the 21 year deal.

9. Jose further informed me that each time that he re-

fused to accept the deal, Mr. Hyatt would get angry and just leave the visit in the middle of he and Jose's conversation in a rude manner.

10. Highly concerned and alarmed with all of the above, I immediately contacted Mr. Hyatt to confront him with that which Jose relayed to me as outlined above. Mr. Hyatt told me that Jose could not win. I asked Mr. Hyatt what was the evidence that "they" (the prosecution/D.A.) had against him and he informed me that Jose had "confessed to everything" on videotape.

11. Mr. Hyatt said that Jose admitted guilt to specifically attempting to murder someone for the benefit of a gang. I told Mr. Hyatt that not only did I not believe that, but that Jose unequivocally had denied being responsible for the crime--especially in the manner ot which it had been alleged, i.e., for the benefit of a gang. I asked Mr. Hyatt to show me the videotape. He told me that I would be able to see it after the trial or after the case was "over."

12. I also asked Mr. Hyatt did he investigate to find-out if the so call "confession" was based on police pressure or based on Jose having been under the influence of drugs. He told me that it was no need to "investigate that" because "it didn't matter" simply because the D.A. would simply "get around that."

13. I asked Mr. Hyatt had he did any other investigation into the case and he said there was "nothing to investigate." I asked Mr. Hyatt how could "they" convict Jose for the gang charge when Jose is clearly not a gang member or associate,

or a criminal. Mr. Hyatt said that the fact that the victim was a gang member, the fact that the victim was hispanic as is Jose, and the fact that Jose has a tatoo that reads: "My Crazy Life" was enough for the "D.A." to use to convict him and that a jury would have no problem convicting Jose based on the above.

14. I told Mr. Hyatt that there were many people/family and friends (witnesses) including our family pastor, Alejandro F. Musumeci, who were more than willing to come forward on Jose's behalf to provide credible testimony that he is not a gang member or even a part time associate and that he is not a "bad person" at all. Mr. Hyatt said that he would try to contact "these people" and our family pastor, but that it quite likely would "do no good" because Jose had purportedly confessed to "everything" and that the victim had purportedly died.

15. I also asked Mr. Hyatt had he made any efforts to prepare Jose to talk to/address the court/judge. Mr. Hyatt said that it was "no need for that" and that it would probably do no good any way.

16. Mr. Hyatt's overall attitude subsequent to my hiring him had dramatically changed for the worse. He'd become very rude, evasive and unforthcoming and even told me that the D.A. was "getting tired of this case dragging on" and that if Jose continued to refuse to accept the 21 year deal that she (the D.A.) would make sure that he received life in prison.

17. Mr. Hyatt further informed me that Jose had repeatedly told him that "God would take care of everything" and that

"someone" needs to tell Jose that such "religious attitude" should not be relied upon because it is not going to prevent him from getting life in prison if he doesn't take the 21 year deal....and this is no time to be "religious."

18. Upon making physical contact with Mr. Hyatt at one point, he informed me that he had attempted to contact my pastor on several occasions but that he had great difficulty "catching up" with him. I informed Mr. Hyatt that my pastor is virtually always in his office and I even called him via my cellphone in the presence of Mr. Hyatt and made contact with my pastor immediately where I then handed my phone to Mr. Hyatt so that he could converse with my pastor.

19. Mr. Hyatt "suspiciously" walked away from my immediate presence with my phone while talking to my pastor out of my hearing range in a secretive manner and returned approximately five minutes later and returned my phone. He said that he would be contacting my pastor again soon, but said nothing more.

20. I spoke with Jose further and he informed me that "Steve" had also been attempting to persuade him to take the 21 year deal upon his visiting Jose therein the Jail.

21. I spoke with my pastor after Mr. Hyatt's phone contact with him as outlined above where my pastor informed me that Mr. Hyatt had contacted him one time and informed him that the victim had died and that he (my pastor) was going to advise Jose to accept the 21 year deal so that he would not get life. My pastor said that he fully supported Jose's stance of putting it "all in God's Hands" but that due to the fact that the

victim had now died, it would be best that he accept the 21 year deal and "keep the faith" amid doing so--even though Jose is not a gang-member/associate and even though there was no evidence to support the gang charge.

22. My pastor also informed me that Mr. Hyatt had asked him to try to "talk some sense" into Jose about taking the deal and to also try to "talk to me" about persuading Jose to take the deal in that Jose and I both were very reluctant to have him plead to a (gang) charge that he is not guilty of--especially in light of the fact that Mr. Hyatt had not discussed or investigated Jose's "side of the story."

23. My pastor said that Mr. Hyatt told him that if Jose did not take the deal, not only would he get 25 years to life in prison at trial, but it would be a total waste of the $15,000.00 that I paid him.

24. Because of all of the above, Jose was ultimately persuaded to take the deal. Jose informed me that he had written letters to the judge and the D.A. to inform them from his heart that he was not a gang member and that the shooting was not related to any gang whatsoever. He also said that he included several bible verses therein such letters.

25. The deal was ultimately set at 19 years there at a formal court hearing in the latter part of May of 2002. Jose was formally sentenced on June 27, 2002. Between the latter part of May, 2002, and Jose's June 27, 2002 sentencing date, Mr. Hyatt allowed me to view the videotape of

Jose's so call confession. Upon my view of the video, I noticed that Jose never actually confessed to attempting to kill anyone and that he repeatedly denied that the shooting was related to gangs.

26. I also heard from several people during the latter said time that not only had the victim "not died", but that he was never subjected to life threatening injuries as a result of the shooting.

27. I immediately attempted to contact Mr. Hyatt concerning the fact about the victim (possibly) still being alive--only to encounter great difficultiy in contacting him. I finally made contact with him on the phone where he told me that he would discuss the matter with me in person because at the time he was "very busy".

28. I contacted Mr. Hyatt again telephonically to inform him that I wanted to definitely attend Jose's sentencing hearing. He informed me that Jose's sentencing was scheduled for June 27, 2002 at 10:00 a.m.

29. As a precaution, I sought the temporary assistance of a local attorney, Eugenio Martinez to look into my son's case before he was formally sentenced. A female representative of Mr. Martinez accompanied me on his behalf to Jose's sentencing whereupon she and I showing up at the courtroom approximately 15 minutes to 10 a.m. (to halt the proceedings) we were told that Jose had already been sentenced at "8:30 a.m." that morning--blatantly contrary to the time Mr. Hyatt informed me.

30. I finally made contact with Mr. Hyatt after Jose was sentenced to confront him with his "deception", He again

informed me that we would meet "in person" and discuss "everything" formally. I also asked him for a copy of the video tape of Jose's so call confession. He told me that he would make a copy for me and send me the videotape and all of Jose's paperwork.

31. Mr. Hyatt and I never did meet in person as he assured me above. He would not return my calls. He was very evasive. To date, Mr. Hyatt and I never met in person as discussed above. He never did send me a copy of the video-tape. It was nearly two years after Jose was sentenced that Mr. Hyatt finally sent me Jose's court papers. He told me that the video tape got lost and could not be located..

32. After Jose's appeal was concluded, I hired another attorney, Michael Y. Alvarez, to represent Jose on habeas corpus. Mr. Alvarez informed me that Mr. Hyatt had indeed done a very poor job in representing Jose and that because so, Jose had a great chance at prevailing on habeas corpus.

33. Mr. Alvarez informed me that Jose's case involved extensive research and investigation, but that he indeed would effectuate a habeas petition on Jose's behalf providing I paid him his requested fee. I paid Mr. Alvarez and he purported to commence an investigation for Jose.

34. Despite my having hired Mr. Alvarez in early 2004, his investigation seemed to never have ended. He did write to Jose and even visited him once, but he was always very difficult for me to contact. He would not return my calls for weeks at a time. So was the same for his secretary(s).

35. In March, 2006, I learned that Mr. Alvarez had

pleaded guilty to felony theft where he was to serve a year in jail--all of which stemmed from his having defrauded several of his clients out of hundreds of thousands of dollars over a period of seven years.

36. I attempted to contact Mr. Alvarez immediately after learning of such news only to encounter great difficulty. I finally managed to make telephonic contact with Mr. Alvarez (once) where he assured me that despite his conviction, he would still be able to properly effecutate Jose's habeas corpus. It never happened. When it did not happen, I attempted to retrieve Jose's paperwork from Mr. Alvarez/his office--all to no avail. His fellow partners were equally of no help. His secretary(s) never returned any of my calls.

37. In mid-2006 I learned via a local newspaper that Mr. Alvarez had become a fugitive in not having turned himself in to serve his sentence of one year in jail. I immediately became highly alarmed and attempted to make contact with him to retrieve all of Jose's records--of which Jose and I had sent to him "our only copies". However, I was unable to contact Mr. Alvarez and the staff there at his office were also of no help.

38. I finally was able to locate a "limited portion" of Jose's records wherewhich upon doing so, I then immediatley forwarded such documents to Jose so that he could commense to "work" on his own case in hopes of salvaging all of the "damage" thus far.

39. Jose informed me that he too, attempted to contact Mr. Alvarez via a plethora of letter and phone attempts--all

to no avail. To date, I have not heard from Mr. Alvarez.

40. I, **Graciela Avalos**, hereby declare and affirm on this 28 day of DECEMBER, 2006 that all of the foregoing is true and correct to the best of my knowledge.

Graciela Avalos

Graciela Avalos
D E C I A R A N T

EXHIBIT "C"

JOSE M. AVALOS
CDC #T-62425 RA-321L
C.T.F. NORTH FACILITY
P.O. BOX 705
SOLEDAD CALIF. 93960-0705

IN THE SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF MONTEREY

SALINAS DIVISION

JOSE M. AVALOS, Petitioner, -vs- BEN CURRY, WARDEN, Respondent.	Habeas Corpus Case N._____ Super. Ct. Case No. SS020937A DECLARATION OF JOSE M. AVALOS, PETITIONER

I, **Jose M. Avalos**, hereby declare and affirm under penalty of perjury and the laws of the State of California and the United States of America as follows:

1. I am a citizen of the United States of America and a resident of the State of California, currently incarcerated in a California penal facility, to wit, the Correctional Training Facility (C.T.F.). I am over the age of 18 years and competent to testify as follows:

2. Following my February, 2002 arrest for various crimes resulting from a shooting that occured in February of 2002, in Salinas California, and during my detainment therein the local jail, I was contacted by a Mr. Kevin Hyatt, an attorney my mother hired/retained to represent me for such crimes (pursuant to the above captioned Superior Court case number.)

3. Upon my initial contact with Mr. Hyatt and virtually

all subsequent contacts with him, I immediately and consistently thereon forward, informed Mr. Hyatt (because I was charged with having committed the shooting for a gang) that I was/am not a gang member, nor an associate of "any" gang--even on a part time basis--and that by no means was the shooting gang related.

4. Mr. Hyatt appeared to concede with me concerning the gang issue--citing that "it appeared that there was no evidence that I was a gang member or that the shooting was gang related."

5. Mr. Hyatt ultimately contacted me on several more occasions where he informed me that a "21 year plead deal" had been offered to me by the prosecution and that if I accepted such deal that the assault charge and a gang and gun allegation would be dismissed.

6. Because the abovesaid deal consisted of my admitting that the shooting was for the benefit of a gang, I immediately expressed vehement opposition to the "deal" because such allegation was simply not true.

7. Mr. Hyatt informed me that "regardless of 'what'", the 21 year deal was a very "good deal" because I was facing 69 years to life if I went to trial on all of the charges and 25 to life for just the attempted murder alone. He informed me that I was facing 10 years for each of the gun/gang allegations and 4 years for the assault charge consecutive to 25 years to life for the attempted murder.

8. I soon received some advice from several fellow inmates held therein the jail with me who told me that my lawyer

was not providing me with the correct information concerning the amount of time I was facing for the crimes I was charged with.

9. Although I was not able to provide Mr. Hyatt with any concrete facts, I nonetheless expressed to him that I felt that he was not telling me the correct information as a whole. He responded by saying: "who are you going to believe, some 'jailhouse lawyers' who are in no better position than you, or your lawyer, who knows what he's doing." He also told me that I needed to talk to my family and my pastor because he had already talked to them and explained the situation.

10. Mr. Hyatt said that maybe "they" (my family/pastor) can get me to "see the light" because 21 years is a whole lot better than life in prison--even if it meant that I was pleading to the (gang allegation) (something I didn't do.)

11. He also told me that the fact that I had a tatoo that read "My Crazy Life" and that the victim was a gang member, that the D.A. would "chew me up" with these two factors in front of a jury and that I was guaranteed to lose at trial as to the gang allegations and all of the charges.

12. I was still very reluctant to accept blame for the gang allegation. Finally, my pastor contacted me and nearly begged and pleaded with me to accept the 21 year deal because he did not want to see me get "life in prison." My pastor told me that he could not believe that the D.A. could prove the gang allegation but that because my lawyer told him that it was nothing he could do, that I should take the 21 years. My pastor said that Mr. Hyatt said that he contacted him to

specifically talk to me to persuade me to take the deal.

13. My pastor (Alejandro Mucumeci) also contacted my parents/family to try to persuade them on Mr. Hyatts behalf to talk to me to take the 21 year deal. My mother and fathaer visited with me there at the jail and told me that I should take the deal to keep from getting life in prison.

14. Never at any time did I tell jail officials that I was a gang member or that I "desired to be housed with 'surenos' or any gangs." At most, I predominately associated with non-affiliate "Mexican Nationals" (natives of Mexico)--all of whom were not associated with gangs.

15. Mr. Hyatt never at any time informed me that I would have to register as a gang member.

16. Upon my mother hiring/retaining Mr. Alvarez to represent me on habeas corpus, I began receiving a series of letters from him indicating that he was engaged in an investigation on my behalf for habeas corpus purposes. Mr. Alvarez came to visit me at least once while I was at Pelican Bay State Prison.

17. I ultimately forwarded virtually all of my records/documents pursuant to my case to Mr. Alvarez per his request. Although Mr. Alvarez claimed to have been engaged in extensive investigation, never at any time was a habeas petition effectuated on my behalf. The last time that I personally heard from Mr. Alvarez was September of 2005.

18. From September, 2005 until approximately March of 2006, I attempted to contact Mr. Alvarez both via telephone and "letterwise" all to no avail. It was in Mid March of 2006 that

I learned from my mother that Mr. Alvarez had been convicted (pleaded guilty) of felony theft directly related to his position as a lawyer.

19. I immediately began attempting to contact him before he had to go serve his time in an effort to find out about the disposition of my habeas corpus litigation as well as to retrieve all of my documents back from him in the event that I would have to either effectuate a habeas action myself, or seek assistance in doing so elsewhere.

20. However, I never received a response from Mr. Alvarez nor from his associates there at his law firm.

21. At one time, my mother managed to finally make contact with Mr. Alvarez who informed her that despite his conviction and imminent sentence, he nonetheless had the habeas action "under control". Yet, never was a habeas action filed.

22. Soon thereafter, my mother informed me that she had learned via a local newspaper that Mr. Alvarez had fled from law enforcement (became a fugitive) by not turning himself in to began serving his sentence of one year in jail.

23. After learning of such, I immediately attempted to contact Mr. Alvarez's fellow associates at his law firm in an effort to retrieve all of my documents of which I initially forwarded to Mr. Alvarez. However, never did I recieve a response from any of his staff to date.

24. My mother encountered the same problems. Finally, my mother managed to locate a limited portion of my records to send to me so that I could began to effectuate a habeas corpus action. Because she was not authorized to send me such re-

cords under the auspice of "legal mail", it took over a full month for me to recieve such records in that mail here at my current place of incarceration is over one month behind.

25. After finally receiving my documents in December of 2006, I immediately set out to effectuate a habeas action with the help of fellow inmates.

26. I, **Jose M. Avalos**, hereby declare and affirm on this 30 day of December, 2006, that all of the foregoing is true and correct.

Jose M. Avalos
D E C L A R A N T/Petitioner

THOMAS J. REIDY, Ph. D., A.B.P.P.

Diplomate in Forensic Psychology
American Board of Professional Psychology

Clinical & Forensic Psychology
CA License PSY 5575

The Sargent House
154 Central Avenue
Salinas, California 93901
831/757-6673

May 17, 2002

PSYCHOLOGICAL EVALUATION

NAME:	Jose Avalos
AGE:	19 (DOB: 7-20-82)
CASE NUMBER:	MS020937A
DATE OF EVALUATION:	May 17, 2002
REFERRAL SOURCE:	The Honorable Terrance Duncan Superior Court of Monterey County
REASON FOR REFERRAL:	Competency to Stand Trial pursuant to 1368 P.C.

RECORDS REVIEWED:

- Monterey County Superior Court Minute Order
- Salinas PD reports and property record

INFORMED CONSENT:

The defendant was informed about the nature and purpose of the examination and that a report would be prepared for the Court with copies going to the District Attorney and Defense Counsel. He expressed an understanding that the interview was not confidential and agreed to proceed.

CURRENT CHARGES:

1. Attempted Murder, Street Terrorism, Use of a Firearm in Commission of a Felony
2. Assault with a Firearm on a Person, Street Terrorism, Use of a Firearm in Commission of a Felony

BRIEF SOCIAL HISTORY:

The defendant lives in Salinas with his parents and other family members. He came to the U.S. from Mexico at about age 18 months. Father operates a taxi company and mother works for McCormick Schillings. During high school the defendant was expelled from Alvarez High because of excessive "arguments" with other students but he denied fighting or disrespect to teachers. After enrolling at No. Monterey County High, he left after a year because of fighting that he claimed was self-defense. Thereafter, he attended Baptist Temple School briefly before enrolling at Hartnell College where he reportedly completed two years worth of classes. He has worked for the last several years at different places in the auto body repair business. He denied ever being married, but has had girlfriends. He denied being in a gang yet stated he associates with Paison-Mexico, which is a group that is neither Norteno nor Sureno.

The defendant denied having any prior psychiatric history. He reported no prior arrest record. However, he has been cited for driving on a suspended license following traffic stops that revealed he had no insurance.

Alcohol abuse was denied. However, he admitted to smoking methamphetamine almost daily for the last seven months. All other drug use was denied.

MENTAL STATUS:

The defendant appeared as a well-groomed individual. Acne was readily apparent on his face. He was completely oriented and responded to most questions in a very polite, calm and rational manner. His rate of speech was not rapid or pressured. Speech and thinking patterns were generally organized and coherent. Reasoning and judgment were intact but his ability to handle abstract concepts was marginal. This may have been a result of some language issues as Spanish is his primary language. Nevertheless, he is certainly capable of comprehending basic concepts and of learning.

He denied experiencing any symptoms of mental illness, including hallucinations, psychosis and mood disturbance, either in the past or at the present time. No hallucinations were obvious and he denied delusions, odd beliefs or any other symptoms of mental illness. As far as the defendant was concerned, he did not consider himself to be mentally ill. Indeed, no symptoms of a mental disorder were apparent from the history, self-report or observed behavior.

COMPETENCY EVALUATION RESULTS:

I administered the MacArthur Competence Assessment Tool - Criminal Adjudication to assess the defendant's competence related abilities. This measure addresses understanding (ability to understand general information related to the law and legal proceedings), reasoning (ability to discern legal relevance of information, and capacity to reason about specific choices that arise legal proceedings), and appreciation (rational awareness of how legal factors and issues might be applied in the context of the defendant's case). In each of these modalities tested he showed minimal to no impairment. When the defendant made an

error or marginal response and had information provided that would enhance his understanding, he was able to learn and give a satisfactory reply incorporating what he had been told.

When asked about the charges the defendant readily expressed an understanding that he is facing attempted murder charges and also mentioned possession of a controlled substance and driving on a suspended license. He had no knowledge of the charges involving Street Terrorism or use of a Firearm in Commission of a Felony. When these were explained, he understood. He was aware the consequences if found guilty at trial would be "twenty five to life". He readily repeated his knowledge that the prosecutor had offered a deal for him to receive a sentence of 21 years and that he would only serve 18 years. However, he stated that he intends to plead not guilty because he lied to police about his guilt fearing that the real shooter, "Nigger", would harm his family if the defendant revealed the information.

This defendant quite clearly understands the judicial system, the role of the participants, evidence and witnesses. He understood the nature of a plea bargain and would not accept any offers, claiming that he is innocent. He displayed a satisfactory appreciation of the meaning and consequences of the proceedings involving his own case. He was quite aware of the fact that he is potentially facing a long prison term. He is certainly capable of some abstract reasoning but comes across as naive and rather simplistic in his thinking.

OPINIONS:

This defendant is lucid and shows no signs of mental disorder. He has a satisfactory understanding of his case, court procedures, his rights and consequences of different outcomes. He can certainly communicate his thoughts and beliefs in a clear and coherent manner sufficient to adequately assist his attorney in preparing a defense.

CONCLUSION:

I believe that Mr. Avalos is **Competent to Stand Trial** pursuant to 1368 P.C.

Sincerely

Thomas J. Reidy, Ph.D., A.B.P.P.
Diplomate in Forensic Psychology
American Board of Professional Psychology

EXHIBIT "D"

000015

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MONTEREY

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOSE MIGUEL AVALOS Defendant.

CASE NO. MS020937A ~~6202124~~

WAIVER OF RIGHTS
PLEA OF GUILTY/NO CONTEST

Defendant to Initial Below

1. My full true name is JOSE MIGUEL AVALOS. J.A.

2. I understand that:

(a) I am pleading Guilty/No Contest to the offense(s) of: 664/187 PC

(b) I am admitting the following enhancements and/or priors: 186.22(B)(1) PC, ~~12022.5~~ 12022.5 PC J.A.

3. I understand that the maximum possible sentence I could receive for the offense(s) is 24yrs plus four (4) years on parole. J.A.

4. I understand that I have an absolute right to: — I understand and give up this right.

(a) A speedy and public trial by jury; J.A.

(b) Confront the witnesses against me: to see, hear, and have my attorney question all witnesses called to testify against me; J.A.

(c) The processes of the Court to compel the attendance of witnesses on my behalf; J.A.

(d) Present evidence on my behalf; J.A.

(e) The privilege against self-incrimination. J.A.

5. I understand that if I am granted felony probation that I may receive up to one year in county jail, plus fines, that I may be required to pay restitution to the victim(s) to register as a sex or drug offender, if applicable, to submit to narcotics and or alcohol tests, to submit to search of my person, car personal effects, or place of residence, night or day, without the necessity of a search warrant, and any other conditions of probation deemed reasonable by the Court. I understand that if I violate any term or condition of my probation, I can be sent to state prison for the maximum term allowed by law as noted above, and that I will be ordered to pay a restitution fine of not less than $200 nor more than $10,000. J.A.

6. I have discussed the charge(s), the facts, the possible defenses, and the consequences of my plea with my attorney. J.A.

000016

WAIVER OF RIGHTS
PLEA OF GUILTY/NO CONTEST

7. I offer my plea of "Guilty"/"No Contest" freely and voluntarily and of my own accord and with full understanding of all matters set forth in the Information and in this waiver. J.A.

8. I understand that if I am not a citizen of the United States a plea of "Guilty"/"No Contest" could result in deportation, exclusion from admission to this country, and/or denial of naturalization. J.A.

9. I have personally initialed each of the above boxes and I understand each and every one of the rights outlined above and I hereby waive and give up each of these in order to enter my "Guilty"/"No Contest" plea(s). I am entering a plea of "Guilty"/"No Contest" because I am in fact guilty. J.A.

Dated: 5-28-02 Signed: Jose Avalos
Defendant
Date of Birth: 7-20-82

ATTORNEY'S STATEMENT

I am the attorney of record and I have explained each of the above rights to the defendant, and have explained and discussed the facts and possible defenses to the charge(s), and the possible consequences of a plea of guilty or no contest. I concur in defendant's decision to waive the above rights and to enter a plea of "Guilty"/"No Contest." I have witnessed the reading of this form by the defendant and his/her initialing and signature upon it.

Dated: 5/28/02 Signed: K Hyatt
Attorney for Defendant

INTERPRETER'S STATEMENT

I, the interpreter in this proceeding, having been duly sworn, truly translated this form and all questions therein to the defendant in the l a n g u a g e. The defendant indicated understanding of the contents of the form and then initialed and signed the form.

Dated: _____ Signed: _____
Court Interpreter

COURT'S FINDING AND ORDER

The Court, having questioned the defendant concerning the defendant's constitutional rights, finds that the defendant understands these rights and has voluntarily and intelligently waived these constitutional rights. The Court finds that the defendant's plea(s) and admission(s) are freely and voluntarily made, that the defendant understands the nature of the charges and the consequences of the plea(s) and that there is a factual basis for the plea(s). The Court accepts the defendant's plea(s), and the defendant is hereby convicted on the plea(s).

Dated: 5-28-02 Signed: _____
Judge of the Superior Court

000012

PROBATION OFFICER'S REPORT.....FILED 06-19-02

EXHIBIT "E"

6/1/02

000029

To Whom It May Concern:

First, I should like to introduce myself. I am Mrs. Rosemarie S. Holewinski, a neighbor of Graciela and Jose Avalos. I am a retired high school teacher. I have know the Avalos family for several years now. I had spoken with Jose over the year or so that he had been living next door and always found him to be polite and in fact very helpful to my husband and myself. We, in turn, helped whenever we could. Jose told me that he wanted an education and had hopes of attending UC Santa Cruz. I commended his attitude and told him to keep up with his studies. We discussed it and I realized that his language skills were weak. I then queried Jose about the classes that he was taking in school. I discovered that he was not taking classes that would lead to a college admission upon graduation from high school. I explained this to Jose and told him that he should see his school Counselor about this as soon as possible. It is my understanding that he left school after turning 19 without a high school diploma. As you well know, this is a huge handicap to any further education that he wanted and to the ability to get a meaningful job.

This has led me to believe that he may have some learning disability. I base this strictly on my 30 years of teaching in an all boy's school from 7th grade to 12th. I taught English and some remedial reading classes. I do recognize learning problems but I do not propose that I am an expert.

I give this as a brief background in order to explain to you how upset I was about the failure of the school district to help this boy. Jose comes from a wonderful family. They are hard-working and deligent. Their only lack is the ability to be proficient in English. This precludes them from clearly understanding much of what happened with Jose and how to effectively communicate with the School District.

If Jose did this terrible thing, then surely, he must be punished. But you must understand that many unfortunate circumstances led up to this that could have been avoided if he had had the proper quidance and his family had a semblance of consideration from the school district. I was the only person they could turn to and I, at best, was not adequate because I did not have direct access to the public school administration standings. I did the best that I could, but all involved must admit that the professional adults in his life failed Jose. He really needs learning ability testing which he did not get when he was in school. To me, I can understand the frustration and lack of self esteem that Jose has felt because of this failure. You too, who are educated, must understand somewhat how he feels. He had great dreams that he could not realize. This was not his fault if he couldn't get the guidance and help our school system is suppoedly set up to give. I and my husband have never known Jose to be violent or contentious. I have seen Jose with his two nephews, sons of his sister, who also live in the family home and seen his patience and sincere love that he has for these two little boys--taking gentle care of them when he is with them. These are not the actions of a violent , combative person.

I request that his sentencing be such that he can stay here in contact with his loving family and be helped to prepare for his GED in order to get and be able to hold a good job when he is released. There are few families as as industrious , hardworking and honest as the Avalos family. This has been a tragedy for them. They are willing and able, I am sure to cooperate in any way that they can to help their son, Jose who is basically a decent person who deserves a chance to prove that he can be a productive good citizen.

Respectfully yours,

Mrs. Rosemarie S. Holewinski
1186 Polk Street
Salinas, Ca 93906

831-449-6506

IGLESIA DE CRISTO
MI-EL
MINISTERIOS ELIM
SALINAS

June 24, 2002

To Whom It May Concern:

By means of this letter we make it known that we know Jose Miguel Avalos Jr. since 1993, which is the son of Jose Avalos and Graciela Avalos. Jose has demonstrate good conduct and to be a pacific and friendly person. Who has been involved in Christian groups keeping good fellowship along with his parents.. To whom affairs it interests and convenes we extend this letter.

P.S.
If you would have any questions
do not hesitate to call us at (831)754-1937 or
(831)784-1406

Attentively,
Pastor Jaime Cruz
Iglesia de Cristo Ministerios Elim Salinas

621 E. Alisal st. Salinas CA 93905

000032

UNIDAD DE FE Y AMOR MINISTRIES
298 E. Market
P.O. Box 875
Salinas, CA 93902
(831) 753-1840

June 25, 2002

Dear Sir or Madam:

We are writing this letter to inform you that Jose Avalos, Jr attended our church in Salinas, California, on a regular basis. He was involved in many projects within the church. He painted the church van, attended music classes and helped in the construction of our new building. He was an active member in the youth group up to a year ago, before he moved to Bakersfield for a short period of time.

His family has been attending our church for more than two years. If you have any questions, please call me at the above phone number.

Sincerely,

Alejandro F. Musumeci

Pastor

000033

Carlos Auto Body

225 Harrison Road
Salinas, CA. 93906

June 26, 2002

To Whom It May Concern:

I Carlos Alvarado have known Jose Miguel Avalos for about two years. My overall relationship with Jose Miguel Avalos has been very good, we worked together in a body shop and I was teaching him the necessary principles of automobile mechanic. I personally do not have any complaints of Jose Miguel Avalos; he has always demonstrated great interest and enthusiasm in his work in the body shop. In my own opinion Jose Miguel Avalos has always been a very respectful person who has never caused any trouble.

Please feel free to contact me if you need further information at (831) 443-6452

Sincerely, Carlos Alvarado

Carlos Alvarado

To whom it may concern....

I'm writing in behalf of Jose Alvarado. That these concerning accusazations in my opinion and point of view to be false. Jose is a quiet, helpful, and hard woking individual. It's impossible for me to believe, Jose to have taken part in such a crime.

I spoke to both Jose's mother and father. They lead me to believe that Jose at the time was mainly concerned with the safety of his family. Jose appeared 3-4 times weekly to help around the shop and learning the trade by working on his own personal vehical.

Jose onced shared that his dream was to one day have and own his own Body Shop. Iem a Salinas local bussiness-owner. Own and operate.

Carlos Auto Body & Repair
225 Harrison road
Salinas, California 93907

My goal in this letter is to highlight and point out although the bad situation Jose funds himself in. He is a good hard woking and reliable individual. I believe it should be taken into consideration, due to the missing facts, that are not being exposed for the safety of his family.

owner: Manuel Torres
of Carlos Auto Body & Repair

Maria Gutierrez
597 Leslie Dr., Apt #E
Salinas, CA 93906
(831) 442-8319
06/10/02

To Whom It May Concern:

This letter is to inform you that I have known Jose Avalos for several years.

I met Jose and his parents at the christian church that we attend. He always accompanied his parents to church. Jose is honest and a humble young man and he comes from a very good family. Jose loves his parents very much and I never saw him in trouble.

Sincerally,

Maria Gutierrez

Mount Toro High School
10 Sherwood place
Salinas, Ca. 93006

To whom it may concern;

I would like to take this opportunity to write this letter on behalf of Jose Avalos Jr.
In 1997 I meet the Avalos family, at that time I was working at Everett Alvarez High.

In my job as a Community Liaison, I have the opportunity to monitor student progress in the academics and behavior areas at the same time I also work closely with their parents.
The main goal is for the student to graduate and achieve goals and look forward to a secondary education and learn life skills.

Since I started working with Jose, he really showed respect and care. He was always polite not only with me but also with other school staff.

Please feel free to contact me at (831) 422-0638 if any questions.

Respectfully,

Sandra Cervantes

000028

Manuel Gallegos chavez.

El proposito de este papel es acerca de algunas referencias sobre joce.

Por mi parte fueron muchos dias los que estuvimos juntos travajando en el misma lugar, ahi lo conosi mas afondo un muchacho muy travajador responsable siembre estava alcorriente del travajo que se le asignava.

Respecto a mi incluso algunos dias estuve dandome raite al travajo, pasavan los dias y empesavamos a conocernos mejor, huvo unos dias en que el travajo empeso a escasiarse, y el tuvo que retirarse a buscar en otra parte, y creo que si lo consiguio. Transcurso del tiempo regreso con un carro y decidio arreglarlo en el taller, empeso a travajar en el asta que lo acavo.

De mi parte nunca me di cuenta que anduviera en algo malo o que andivia con personas con mal record s siempre en un buen termino el platicando del futuro que le ya que pronto su novia tendria un hijo de el y creo que entre sus planes era ya pronto casarce.

Pasaron los dias y algunas veces nos visitava despues de ahi no emos sabido mas asta ahora que creo que esta en un grave problema.

Esperamos que este papel sirva de algo ya que esto joce es una buena persona en un buen termino

Mi Nombre.
Manuel Gallegos chavez.

DECLARATION OF SERVICE BY MAIL

CASE NAME: Avalos v. Curry (Habeas Corpus)

CASE NO.: U/A

I, Jose Miguel Avalos, declare that I am over the age of eighteen (18) years; I am/am not a party to the attached action; I served the attached document entitled: PETITION FOR WRIT OF HABEAS CORPUS/ATTACHED EXHIBITS

on the persons/parties specified below by placing a true copy of said document into a sealed envelope with the appropriate postage affixed thereto and surrendering said envelope(s) to the staff of the Correctional Training Facility entrusted with the logging and mailing of inmate legal mail addressed as follows:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
280 SOUTH FIRST STREET, ROOM 2112
SAN JOSE, CALIF. 95113-3095

OFFICE OF ATTORNEY GENERAL
OF THE STATE OF CALIFORNIA
455 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIF. 94102-7004

There is First Class mail delivery service by the United States Post Office between the place of mailing and the addresses indicated above. I declare under the penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I executed this service this 3 day of January, in Soledad, CA.

Declarant